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No. 796

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

TECHNICAL TAPE CORPORATION,
Petitioner,

vs.

MINNESOTA MINING AND MANUFACTURING COMPANY,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

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The Scheffer Press, Inc.—ANdover 3-6850

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The judgment of the United States Court of Appeals for the Seventh Circuit as to which review is sought was entered on October 17, 1962, pursuant to a unanimous decision. In all respects it affirmed the judgment of the United States District Court for the Northern District of Illinois, Eastern Division. No petition for rehearing or reconsideration was filed.

The petition for writ of certiorari in the above-entitled case was filed in this Court on February 6, 1963. The time for filing such petition, or for seeking an extension of time for so doing, expired on January 15, 1963. No extension of time was timely sought or granted. Accordingly, the petition was not submitted within the

time set forth by statute for such petitions, and must be denied.

The time within which a petition for the writ of certiorari in a civil action may be brought is prescribed by statute. Title 28 U. S. C., § 2101(c), provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

The record of proceedings in the Court of Appeals shows that the judgment of the Court of Appeals was entered on October 17, 1962, not on November 6, 1962, as petitioner erroneously states (Petition p. 2). The rules of the Court of Appeals for the Seventh Circuit are explicit in stating that the date of its opinion is the date of its judgment.* Rule 23 of that Court's rules provides:

> "All opinions released by the court shall, on the same day, be handed to the clerk to be filed, and a copy thereof mailed to counsel for each party. In all cases except that of a decree enforcing the order of an administrative tribunal, judgment shall be entered on the date the opinion is filed."

Therefore, in accordance with the statute above quoted, Rule 22 of this Court, and Rule 23 of the Court of

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* While the mandate of the Court of Appeals was handed down on November 6, 1962 (20 days after the date of the Opinion and judgment), this is of no consequence here.

Appeals for the Seventh Circuit, the petition to be timely should have been filed not later than January 15, 1963.*

Moreover, even on the basis of petitioner's erroneous statement that the "Judgment of the Court of Appeals was entered on November 6, 1962" (whereas it was entered on October 17, 1962), the petition was nonetheless filed late. Ninety days from November 6, 1962 expired on February 4, 1963. The petition, however, was not filed until February 6, 1963.

The petition for writ of certiorari in this action, being without the time permitted by statute, should be denied.

Respectfully submitted,

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* Petitioner did present to the Clerk of this Court, on February 4, 1963, an application for an extension of time. The application was not timely and was refused. Under this Court's Rule 34(2), the "clerk will refuse to receive any application for extension sought to be presented after expiration of" the period within which the petition for the writ could have been filed.